

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

A National Broadband Plan  
for Our Future

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GN Docket No. 09-51

To: The Commission

COMMENTS OF THE  
COALITION OF CONCERNED UTILITIES

Allegheny Power  
Baltimore Gas and Electric Co.  
Dayton Power and Light Co.  
FirstEnergy Corp.  
Kansas City Power and Light  
National Grid  
NSTAR  
PPL

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Filed: June 8, 2009

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**COMMENTS**

Allegheny Power, Baltimore Gas and Electric, Dayton Power & Light, FirstEnergy, Kansas City Power & Light, National Grid, NSTAR and PPL (collectively, the “*Coalition of Concerned Utilities*” or “*Coalition*”), by their counsel and pursuant to Sections 1.415 and 1.430 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”), 47 C.F.R. §§ 1.415 and 1.430, hereby submit these Comments in response to the Notice of Inquiry (“NOI”) released in this proceeding on April 8, 2009.

The utilities represented in the *Coalition* provide electric services to more than 14,200,000 customers in 11 States and own, in whole or in part, more than 8,100,000 electric distribution poles. Most of these poles also are used by communications companies to provide video, voice and broadband services.

At paragraph 50 of the NOI, the Commission asks to what extent pole attachments “*stand as impediments*” to broadband deployments. This negatively-phrased question is the only reference to pole attachments in the NOI, and it unfortunately mischaracterizes the electric utility’s longstanding contribution to broadband deployment.

Quite the opposite of impeding broadband deployment, electric utilities have greatly facilitated the deployment of broadband services throughout the country, including specifically in rural and remote areas. By furnishing fully-constructed pole distribution systems, electric

utilities have enabled and continue to enable cable companies, incumbent local exchange carriers (“ILECs”), competitive local exchange carriers (“CLECs”) and others to “hop on board” and to deploy increasingly sophisticated video, voice and broadband services. Communications companies can inexpensively attach to these fully-constructed distribution corridors -- at extremely modest rates -- without incurring the substantial cost and inconvenience of being required to construct their *own* pole distribution systems. In addition, communications companies have “piggy-backed” to a large extent on easements and rights-of-way already conveniently obtained by electric utilities.

The minimal annual rental fees that existing Commission Rules require electric utility pole owners to charge for access to these fully-constructed pole distribution systems do not come close to reflecting the value of these systems to the attachers or the enormous construction costs that communications companies avoid by not having to build, operate and maintain their own pole distribution systems. Considering that communications companies pay far below their fair share of pole costs and the extent to which their attachments burden electric utilities, existing pole attachment rental fees do not come close to representing a fair rental amount.

Instead of asking how pole attachments may be “*impeding*” broadband deployment, much more appropriate questions in this proceeding should be:

- (1) to what extent have pole attachments facilitated broadband deployments?;
- (2) to what extent are electric utilities under-compensated for pole attachments?; and
- (3) to what extent have communications companies compromised the safety and reliability of electric utility distribution systems?

The answers to these questions are contained in the Comments, Reply Comments, and numerous *ex parte* filings submitted by the *Coalition* in the Commission’s pending Pole

Attachment rulemaking proceeding.<sup>1</sup> Copies of those *Coalition* filings are attached as Exhibits to this pleading and are submitted for the Commission's consideration in this Broadband NOI docket.

The Coalition estimates that since enactment of the Pole Attachment Act in 1978, the FCC's pole attachment rate formula has required electric utilities and their ratepayers to subsidize cable television companies by approximately *\$10 million per year for every 500,000 poles* to which cable companies have attached facilities.<sup>2</sup> This colossal annual subsidy has enabled "nascent" CATV companies identified by Congress in 1978 to become the communications giants they are today. Companies like Comcast, with \$25-\$34 billion in revenues for the last several years, do not deserve these types of originally well-intentioned but now seriously misplaced subsidies.<sup>3</sup>

The subsidy provided to communications companies is actually far higher than this amount, considering all of the additional costs that communications attachments generate. Electric utilities must install taller (and more expensive) poles in order to accommodate communications attachers, and the attachments themselves decrease pole life.<sup>4</sup> Apart from higher capital costs, communications attachments also vastly increase utility operating expenses.<sup>5</sup>

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<sup>1</sup> *Implementation of Section 224 of the Act; Amendment to the Commission's Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, WC Docket No. 07-245, RM-11293, RM-11303 (released Nov. 20, 2007).

<sup>2</sup> Cable operators currently pay 7.4% of an electric utility's total annual pole costs. Assuming annual pole costs of \$100/pole (\$300 net cost of a bare pole X 33% carrying charges = \$100/pole) and that cable operators should pay the 27.1% rate recommended by the Coalition's Comments in its Pole Attachment rulemaking proceeding, then cable attachers should be paying \$9,850,000 more per year than they currently do for every 500,000 poles to which they are attached (500,000 X \$100 X (27.1% - 7.4%) = \$9,850,000).

<sup>3</sup> Coalition Comments, pp. 18-19.

<sup>4</sup> Coalition Reply Comments, pp. 4-6.

<sup>5</sup> *Id.*, pp. 5-7. To name a few, these additional operating expenses include: (1) employment of numerous full- and part-time personnel to administer all aspects of the attachment process; (2) correction of attacher safety violations; (3) transfer of attacher facilities; (4) new liabilities caused by communications attachments; and (5) responding to non-electric wire down calls. *Id.*

In addition, as demonstrated in the attached filings, unauthorized attachments and attacher safety violations are rampant, resulting in additional lost revenues and a compromised electric distribution system.<sup>6</sup>

While the Commission is focused in this proceeding on the issue of nationwide broadband deployment, there are other critical national policy issues at stake as well. In this era of energy awareness, and considering the billions of dollars in subsidies that electric utilities have provided (and continue to provide) to cable operators and CLECs to allow them to deploy video, voice and broadband services over the years, it would be entirely appropriate for the Commission to allocate a substantial portion of the federal broadband stimulus dollars to electric utility ratepayers, to compensate them for their longstanding subsidization of communications companies. At the very least, the Commission should remove this colossal subsidy going forward by establishing a fairer, nondiscriminatory attachment rate that corrects the problem of cross-subsidization between the electric utility and communications industries.

In addition to eliminating the subsidy to communications attachers, the Commission must preserve the integrity of the nation's electric utility distribution system by ensuring that communications attachers deploy their services in a safe and responsible manner. As explained by the *Coalition* in the attached filings, incentives are critically needed to police irresponsible attachment activities. To accomplish this goal, the Commission should adopt the unauthorized attachment and safety violation penalties proposed by the *Coalition*.<sup>7</sup>

The *Coalition* wholeheartedly supports the full deployment of broadband services throughout the country, but not at the expense of the safe, reliable and efficient operation of the nation's electric utility distribution systems. The subsidy that once may have been helpful to

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<sup>6</sup> Coalition Comments, pp. 71-79.

<sup>7</sup> *Id.*

promote the development of “nascent” communications companies long ago served its original purpose and should be removed immediately, particularly in these times of rising energy costs.

**WHEREFORE, THE PREMISES CONSIDERED**, the *Coalition of Concerned Utilities* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**COALITION OF CONCERNED UTILITIES**

**Allegheny Power  
Baltimore Gas and Electric Co.  
Dayton Power and Light Co.  
FirstEnergy Corp.  
Kansas City Power and Light  
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**BROADBAND NOI PROCEEDING  
GN DOCKET NO. 09-51**

**COMMENTS OF THE  
COALITION OF CONCERNED UTILITIES**

**LIST OF EXHIBITS**

(All Exhibits Previously Filed in the Pending  
Pole Attachment Rulemaking Proceeding)

Exhibit A	Comments of the Coalition of Concerned Utilities (March 7, 2008)
Exhibit B	Reply Comments of the Coalition of Concerned Utilities (April 22, 2008)
Exhibit C	<i>Ex Parte</i> Letter to the Honorable Kevin J. Martin expressing pole attachment concerns (June 3, 2008)
Exhibit D	Letter to Marlene H. Dortch, Secretary, describing <i>ex parte</i> meetings and attaching handouts (June 5, 2008)
Exhibit E	Letter to Marlene H. Dortch, Secretary, describing <i>ex parte</i> meetings and attaching handouts (July 3, 2008)
Exhibit F	Letter to Marlene H. Dortch, Secretary, regarding why broadband is not deployed in rural America (July 17, 2008)
Exhibit G	Letter to Marlene H. Dortch, Secretary, attaching <i>ex parte</i> filing entitled " <b><i>Top Ten Cable/CLEC/ILEC 'Myths' About Pole Attachments</i></b> "
Exhibit H	Letter to Marlene H. Dortch, Secretary, describing <i>ex parte</i> meetings and attaching handouts (August 14, 2008)
Exhibit I	Letter to Marlene H. Dortch, Secretary, responding to ATT/Verizon and US Telecom rate proposals (November 13, 2008)
Exhibit J	Letter to Acting Chairman Copps and Commissioners Adelstein and McDowell, responding to Fibertech/KDL and BWPA make-ready deadline and pole attachment access proposals (May 1, 2009)